

news letter of the law

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September 2006



HOW TO GET A FREE SEPARATION AGREEMENT

Did you know that if you are transferring a house from joint names into one of your names as part of a legally binding separation agreement, you don't have to pay any Stamp Duty?

As the Stamp Duty saved is usually more than the cost of the agreement itself, you can effectively get the agreement for free and save a bit extra provided you do the agreement first.

Unlike a divorce application for married couples which can only take place 12 months after separation, these agreements (for both married and de facto couples) can be done around the time of separation if you are ready.

There are three types of agreements available to de facto couples if they wish to finalise children's matters, property

matters and / or child support matters without court proceedings:

1. Separation Agreement - To finalise Property Matters;
2. Consent Orders - To finalise Children's Matters and/or Child Support Matters; and
3. Child Support Agreement - To finalise Child Support Matters.

There are also three types of Agreements available for married couples who also have potential spousal maintenance issues:

1. Consent Orders - To finalise any property matters, children's matters and child support matters but not spousal maintenance issues (if any);
2. Financial Agreement - To finalise any property matters and spousal maintenance matters but not children or child support matters.

3. Child Support Agreement - An alternative to Consent Orders if you wish to finalise child support only.

Consent Orders are the most popular agreement for married couples because the only matter they cannot finalise is spousal maintenance which is impossible to finalise anyway if one of the parties is receiving an income tested pension, allowance or benefit including the common Family Tax Benefit.

There are even ways to draft Consent Orders to deal with and greatly reduce the risk of spousal maintenance.

If these property agreements are prepared legally, they are very difficult to set aside although each type of property agreement has limited grounds for doing

so. These are usually based on common sense reasons such as non-disclosure of material assets or of the true value of assets.

Defacto couples have up to 2 years after separation to finalise a property agreement and married couples have up to 12 months after their divorce (which requires at least another 12 months of separation).

In summary, if you get a lawyer to draft an agreement properly before you pay stamp duty to transfer a property, it won't cost a cent extra for your complete peace of mind before your partner changes their mind when financial circumstances change, guilt disappears or a new partner arrives on the scene.

by Gavin Lai
Family Law
Solicitor

Business Broker completes our One Stop Commercial Shop

Business Broker Richard Thomas now operates full time from our Morayfield office to complete the needs of our business clients.

He joins our after hours accountant David Douglas, our Commercial Lawyer Andrew Douglas and our visiting finance broker Lawfund to complete our one stop shop for Commercial clients.

Together with our conveyancing clerk Rebecca Jensen and Family Lawyer Gavin

Lai they ensure all legal bases are covered with the appropriate degree of specialisation that you would expect from a competent law firm.

We look forward to working with Richard who brings several years of experience with him and is possibly the only business broker servicing the Caboolture / Redcliffe / Pine Rivers area on a full-time basis.

Richard can be contacted on 07 5408 0389.

David Douglas & Co.



David Douglas
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Family law changes

The Federal Government has introduced a series of changes to the family law system, effective from 1 July 2006.

The changes represent the most significant reforms to family law in 30 years and focus on the way family separations are managed.

The legislative reforms aim to promote three principles:

- **Shared parental responsibility** – Except where there are issues of violence or abuse, the law presumes that it is in the best interest of a child for the parents to have equal shared parental responsibility in making decisions about important issues that affect their children.
- **The right of children to know both parents and be protected from harm**
- **Resolving disputes co-**

operatively – Starting in mid-2007, the changes to the law phase in a requirement for parents to attend family dispute resolution sessions and make a genuine effort to resolve the issues in dispute, before taking a parenting matter to court.

This requirement does not apply where there is family violence or child abuse.

Twelve pieces of federal family law legislation have been amended, including:

- 1 *Family Law Act* 1975
- 2 *Family Law (Child Abduction Convention) Regulations* 1986
- 3 *Family Law Regulations* 1984
- 4 *Family Law Rules* 2004
- 5 *Child Support (Assessment) Act* 1989
- 6 *Child Support (Assessment)*

Regulations 1989

- 7 *Child Support (Registration and Collection) Act* 1988
- 8 *Child Support (Registration and Collection) Regulations* 1988
- 9 *Federal Magistrates Act* 1999
- 10 *Federal Magistrates Regulations* 2000
- 11 *Marriage Act* 1961
- 12 *Marriage Regulations* 1963

The legislative changes apply to parenting orders made on or after 1 July 2006.

For more information and comprehensive advice on these changes, contact your Family Law Solicitor, Gavin Lai.

New legislation to increase access to building records

Queenslanders will be able to check whether building work such as house extensions, sheds or pool fences have the proper approvals, under amendments to the *Integrated Planning Act 1997*.

Local Government and Planning Minister Desley Boyle said people who were looking to buy a house or who were adversely affected by their neighbour's building work often had difficulty in finding out whether the right approvals were in place.

"People have complained, for example, that their neighbour's extension looks right into their bedroom or a new shed built right against the fence blocks the sunlight," Ms Boyle said. "Up until now, local governments have had the discretion to decide who could and could not access building approval and inspection documents.

"This has led to different councils allowing different levels of access, which has caused problems for people trying to prove their neighbour's shed or extensions shouldn't be there.

From 1 September, councils will be required to allow people to inspect building approval documents, subject to privacy and security restrictions. Councils will be able to charge a fee equal to the cost of providing this service.

Some councils, such as Logan City Council, already provide full public access to building approval documents. Other councils including Cairns, Redcliffe and Caboolture provide full access with the owners' consent or on contract of sale.

Ms Boyle said another change under the new legislation was the requirement for councils to keep building records for houses and pool fences for the life of the structure, as is the case for commercial or industrial buildings. Currently they are only kept for ten years. Records for sheds will still be kept for ten years.

"Councils and owners will be able to check compliance requirements and this will help investigations of complaints about illegal building work," Ms Boyle said.

Legal rights of franchisees

Joining a franchise is a popular option for people seeking a career change or trying their hand at running a business. But it is important that prospective franchisees fully understand their legal rights and obligations before entering into a franchising agreement.

The Commissioner of the Australian Competition and Consumer Commission (ACCC), John Martin, said the ACCC was targeting the franchising sector as part of a focus on fighting fraudulent behaviour in the marketplace.

"The main message the ACCC aims to promote is for people who are choosing to join a franchise business to be diligent and make informed decisions before signing on the dotted line," Mr Martin said.

"Buying into a franchise generally involves large sums of money and potentially lifetimes of savings, so it makes sense that prospective

franchisees have as much information about the business and seek professional advice before making their investment".

The ACCC has issued a franchisee start-up checklist to assist prospective franchisees make informed decisions about purchasing a franchise.

The checklist is a practical guide to requirements under the Franchising Code of Conduct and important franchising issues such as:

- disclosure documentation
- cooling-off periods, and
- warning signs to watch out for.

To obtain a copy of the checklist contact the ACCC on 1300 302 021 or download it from www.accc.gov.au.

Never consider taking on a franchise without consulting with your solicitor, who can provide comprehensive legal advice on the rights and obligations of franchisees under the law.

Online trader fined

A Brisbane online trader has been fined \$45,000 after he and his company were convicted of taking customers' money without delivering the goods.

Troy Raymond Ellis and his company Cyber Village Pty Ltd were fined for breaching the *Fair Trading Act* and were ordered to pay costs after a Brisbane magistrate found they had blatantly disregarded the law and frustrated fair trading investigators.

Fair Trading Minister Margaret Keech said Ellis, of Spring Hill, and his business I-Central – an online retailer of computers, software and mobile telephones – first came to the attention of the Office of Fair Trading

(OFT) in 2001.

"Since then, OFT has received almost 120 complaints from Queensland and interstate about Ellis and his company, most from people alleging he had not delivered goods they paid for," Mrs Keech said. "When Fair Trading first received complaints, we investigated and attempted conciliation. Further complaints were received and it was obvious Ellis had chosen not to modify his behaviour.

"In 2005, after further discussions and meetings with the Office of Fair Trading, Ellis and 'I-Central' were publicly named to warn consumers.

"Shortly after, Ellis closed his doors and left the country. When he returned, Fair Trading was there to ensure he faced the consequences of his actions."

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